

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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JOHN CLARIZIA, FRANCES ERVING,
and JOHNNIE ERVING, individually and
on behalf of others similarly situated,

Plaintiffs,

-against-

OCWEN FINANCIAL CORPORATION,
OCWEN LOAN SERVICING, LLC,
SAXON MORTGAGE SERVICES, INC.,
MORGAN STANLEY, ASSURANT, INC.
(d/b/a Assurant Specialty Property), and
AMERICAN SECURITY INSURANCE
COMPANY,

Defendants.

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USDC SDNY

DOCUMENT

ELECTRONICALLY FILED 02/03/2016

13 **CIVIL** 2907 (ALC)(HBP)

JUDGMENT

Plaintiffs having brought this purported class action suit against loan servicers and insurers; alleging that the loan servicers purchased lender-placed insurance policies from the insurers under exclusive and illegal arrangements that included kickbacks from the insurers. On September 29, 2015, this Court issued an Order to Show Cause as to why Plaintiffs' claims should not be dismissed pursuant to Fed. R. Civ. P. 12(b)(6). The Order was occasioned by a recent Second Circuit decision, which dealt with claims related to lender-placed insurance similar to those raised here and which ultimately dismissed those claims under the filed rate doctrine. Per this Court's Order, Plaintiffs were ordered to show cause as to why their case should not be dismissed against all Defendants on the grounds that the filed rate doctrine precluded their claims against both the insurer Defendants and the loan servicing Defendants. The Court also granted leave to one group of Defendants, the Assurant Defendants, to file a motion to reconsider its previously denied motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1), as those Defendants also raised filed rate doctrine arguments there. The lender-placed insurance scheme alleged here is nearly identical to the scheme described in a related

action, Lyons v. Litton Loan Servicing, LP, NO. 13 Civ. 513 (ALC). The Court issued an Order in Lyons (the “Lyons Order”) addressing the Assurant Defendants’ Rule 12(b)(1) motion and their subsequent motion to reconsider and all Defendants’ motion to dismiss pursuant to the Order to Show Cause, and the matter having come before the Honorable Andrew L. Carter, Jr., United States District Judge, and the Court, on February 2, 2016, having rendered its Opinion and Order and for the reasons stated in the Order and discussed more fully in the Lyons Order, the Court is dismissing the claims of Plaintiffs Frances and Johnnie Erving as to all Defendants; and directing the clerk to terminate this case, it is,

ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Memorandum Opinion and Order dated February 2, 2016, and discussed more fully in the Lyons Order, the claims of Plaintiffs Frances and Johnnie Erving are dismissed as to all Defendants; accordingly, the case is closed.

Dated: New York, New York
February 3, 2016

RUBY J. KRAJICK

Clerk of Court

BY:

K. Mango

Deputy Clerk